

Memorandum



DATE: March 2, 1005
TO: Committee on Local Government and Urban Policy
FROM: Patrick Lindemann, President
RE: HB 4283 (H-1)

The Michigan Association of County Drain Commissioners (MACDC) appreciates the opportunity to provide testimony relative to HB 4283. This bill proposes to amend Sections 72 and 154 of the Drain Code in several major areas. MACDC offers the following comments as to the recommended revisions:

- **Increasing Board of Determination membership from three to five.** MACDC opposes this proposed amendment. It is difficult to locate property owners within the county who are willing to sit on Boards of Determination. Members of the Board of Determination are asked to donate their time to hear testimony and make decisions, and must be capable of running a meeting. MACDC fails to see how an increase in membership of the Board of Determination will improve the proceedings.
- **Requiring that at least one Board of Determination member is a local official.** Drain Commissioners often seek current or retired local officials to sit on Boards of Determination as these citizens are capable of running meetings. In some counties, there can be several Boards of Determination a month, and a requirement for current local officials to take time from their schedules that already include meetings for their own municipality, and to now sit on one or more Boards of Determination each month may be excessive. The Drain Commissioners try to appoint members with experience and background suited to the issues presented by a petition. While local officials do make excellent Board of Determination members, it may not always be possible to secure them as a member. Therefore, MACDC opposes an amendment that mandates the membership to include a local official.

- **Requiring that the County Board of Commissioners Approve A Pool Of Acceptable Board of Determination Members.** MACDC does not view the approval of Board of Determination members by the County Board of Commissioners as necessary. However, MACDC has not opposed the concept in past discussions of Drain Code revisions.
- **Consideration of Proposed Costs and Benefits During the Necessity Hearing.** Requiring the consideration of costs and benefits of a project at the initial stage of a necessity hearing poses several issues:
 - ***Substantial increase in costs for upfront engineering and surveying.*** In order for the Board of Determination to have a realistic estimate of costs for a project, substantial engineering and design would be required. This means that the project would have to be “pre-engineered” before it is ever determined that a project is necessary. Moreover, it is not possible to foresee all costs that may be necessary to complete a project. Examples of costs that cannot be “pre-engineered” or known at the time of the Board of Determination include condemnation, litigation, and permit issues.
 - ***Payment of engineering and surveying costs if finding of no-necessity.*** If “pre-engineering” of a project is required before necessity, and the project is found not necessary, someone needs to pay the costs. As the Drain Code is currently written, the costs would be paid for by the county general fund, or potentially by the petitioners if the county required a bond. Accordingly, there is a chilling effect on property owners or municipalities wishing to petition to address problems as they may be liable for significant costs for engineering that will not be used, or the county will expend substantial general fund monies. In this scenario, the average property owner will not have the financial ability to petition for projects.
 - ***Definition of “Costs and Benefits” for purposes of decision-making.*** In addition to the “pre-engineering costs,” there also needs to be some data available to the Board of Determination as to the proposed “benefits” of the project. “Costs” and “benefits” are not defined in HB 4283, and can mean a myriad of different things. Moreover, a cost/benefit analysis for a project can be costly, and in many cases, wholly unnecessary. In addition to securing engineering data, a preliminary apportionment roll would need to be prepared for a municipality or property owner to properly gauge the cost and benefit as it relates to their community or property. Of concern is the cost and benefit to upland owners whose storm water contributes to the flooding downstream. Certainly the cost and benefit are significantly different to each. The cost and benefit of drainage to address development issues may support the interest of a municipality or property owners who will reap greater profit from the role of developable land, but not others in the district who do not support development. It would be virtually impossible to accomplish a cost/benefit analysis that addresses these variety of interests.

- *Drain Commissioner is the elected official chosen by the citizens of the county to make decisions as to the scope of a project.* The Drain Commissioner is an elected official chosen to make decisions about storm water drainage in his/her county. One of the many duties of the Drain Commissioner is to make decisions as to whether a project is beneficial to the property owners in a drainage district. Property owners and public officials not elected by the property owners in the county should not make decisions about cost for a drainage district. Many of the decisions about project scope are technical in nature as well as financial, and should be left to the elected official.

* **Preliminary Estimate of Cost and 20% Increase In Costs After Finding of Necessity.** MACDC has the same concerns about this additional language for the reasons detailed above relative to achieving a cost/benefit analysis. In the early stages of a project, there are a number of costs which are unknown and not capable of being fully analyzed. Additionally, other property owners in the Drainage District have not been afforded an opportunity for input as to their needs, all of which are considered in a proposed project. As a result, a preliminary estimate presented early on in the proceedings will not be an appropriate measure for a subsequent 20% evaluation requiring the reconvening of the Board of Determination. The proposed language would put the project back in the hands of the Board of Determination after monies have been spent on permits, land acquisition, and engineering. Conceivably, considerable expenses could have been incurred, easements and property interests acquired, and no project is constructed. Further, the Board of Determination is then put into the position of making scope decisions without technical expertise, and that role is directly contrary to findings of the appellate courts defining the role of the Drain Commissioner.

For the reasons outlined above, MACDC opposes HB 4283.

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